

ARG-0204

OGC Has Reviewed

28 April 1960

25X1A9a

MEMORANDUM FOR: [REDACTED]

SUBJECT : Concurrence in Finding and Determination as to
Application of the Buy American Act

I have concurred in the finding and determination as to the application of the Buy American Act with respect to Contract No. KK-1010 (ARG-0200, 21 April 1960). However, I think the action need not have taken the form of a finding and determination. This is not a situation where, by statute, a finding must be made by the head of a department or another official. Sub-section 10(a) of Title 41 provides, in pertinent part, that it shall not apply if articles, materials or supplies of the class or kind to be used are not manufactured in the United States "in sufficient and reasonable available commercial quantities and of a satisfactory quality." The section either applies or it doesn't. It seems to me that all that would be required of the department involved is to act in accordance with the facts, that is, if the articles and materials are not manufactured in the United States in sufficient and reasonable available commercial quantities and of a satisfactory quality, then the department may procure such articles or materials elsewhere. In order to be sure of the fact of unavailability the department involved would have to make whatever study and investigation the situation warrants. Thus, a memorandum by the Contracting Officer, retained in his files, stating the basis upon which he has satisfied himself that the materials or articles are not available I should think would be all that is required in order to support his judgment that, for this procurement, the Buy American Act is not applicable.

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[REDACTED]
Assistant General Counsel

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1 - Yellow Chrono for [REDACTED] Bldg.